In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 296

PERCY S. AND NANCY T. J. WINFIELD, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The petition for a writ of certiorari should be denied because it was not timely filed.

The judgment of the court of appeals, affirming the decision of the Tax Court, was entered on February 3, 1967 (see Doc. No. 11).[1] A petition for a rehearing was denied on February 24, 1967 (Doc. No. 13).

[1] For convenience, references are to the number of documents accompanying the petition, as enumerated in the index thereto.

No extension of time for petitioning was sought or obtained. The petition for a writ of certiorari was filed on June 26, 1967—approximately 120 days after the denial of rehearing and long after the statutory 90-day limitation for filing a petition. 28 U.S.C. 2101 (c); Rule 22(3) of the Rules of this Court.[2] The petition was thus plainly untimely and the Court has no jurisdiction to entertain it.

Respectfully submitted,

THURGOOD MARSHALL,
Solicitor General.

JULY 1967.

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[2] On May 2, 1967, counsel for the Commissioner received by mail a copy of a document entitled "Notice of Appeal to the Supreme Court of the United States", which had been filed in the court of appeals, but which was not filed with this Court. The filing of such a document in the court of appeals did not toll the 90-day period for petitioning. Even if petitioners believed their case to come under 28 U.S.C. 1253—which is cited as the jurisdictional basis of the "Notice of Appeal"—the document was not filed within the sixty day period which 28 U.S.C. 2101(b) establishes for taking direct appeals from district courts to this Court.

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